UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

NORTH HILLS OFFICE SERVICES, INC

AND **CASE 29-CA-26546**

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ, AFL-CIO

James Kearns, Esq., Counsel for the General Counsel
Judith I. Padow, Esq. and Katchen Locke, Esq., Counsel for the Union
Alan Pearl, Esq. and Nancy Hark, Esq., Counsel for North Hills

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in Brooklyn, New York on February 15, 2005. The charge in this case was filed on September 27, 2004 and the Complaint was issued on December 22, 2004. It alleged

1. That on or about June 3, 2004, the Respondent, by its supervisor Policarpio Cruz, **(a)** prevented employees from speaking with union representatives in the parking lot, **(b)** created the impression of surveillance, and **(c)** interrogated employees about their union activities.

2. That in July 2004, the Respondent, by its supervisor Angel Antonio Alvarez, prevented employees from speaking to union representatives in the parking lot.

3. That in July 2004, Alvarez threatened employees with discharge and with stricter enforcement of company rules because they supported the union.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed, I make the following

Findings of Fact

I. Jurisdiction

The Respondent admits and I find that it is an employer within the meaning of Section 2(2), (6) & (7) of the Act. I also find that Service Employees International Union, Local 32BJ, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

North Hills Office Services is a cleaning contractor that does business in the New York/New Jersey Metropolitan area. In the present case, it has a contract to provide these

services in a building located at 25 Harbor Park Drive in Port Jefferson, New York. This is a two story building which has a single tenant, the Pall Corporation.[1] That company has offices and some kinds of laboratories in the building. North Hills has about 10 or 11 cleaning people who work at the building, normally between 6 p.m. and 10 p.m.

The Respondent employs about 400 cleaning employees who work at about 60 to 65 locations. Since 1974, with one exception, its employees, on a company wide basis, in the classifications of matrons and porters, have been represented by another labor organization called the National Organization of Industrial Trade Unions, (NOITU).[2]

In or about May 2004, the Charging Party commenced an organizing drive amongst various of the Respondent's employees at various of its locations. In the present case, union organizers attempted to approach employees at 25 Harbor Park Drive in early June 2004.

Ruth Perez testified that in early June 2004, she spoke with a union organizer in the parking lot one evening after her shifted ended. She testified that supervisor Policarpio Cruz passed by while she had this conversation. He concedes that he saw her having a talk with someone whom he assumed to be a Local 32BJ organizer.

On the following day, Cruz approached Perez and admittedly told her that a security officer for the building, via the security camera, had seen her talking to someone and that she should not be talking to visitors in the parking lot. He told her that the Respondent's rules forbid employees from talking to visitors on company property. She testified that Cruz gave her a copy of the Respondent's employee rules and told her that she had to follow the rules or she would be fired. He testified that he told her that she had to follow company rules but states that he did not mention any consequences for failing to do so.

Perez also testified that in July 2004, there was another occasion when she spoke to a union organizer in the parking lot as she was in her car. According to Perez, on this occasion a man whom she later found out was Angel Alvarez, came over to the car, banged on the window and told her that she had to leave; that she couldn't be talking to someone in the parking lot. Perez testified that on the following evening, at the beginning of her shift, Alvarez came over to her, introduced himself and said that the building was a terrorist target and that she could not be talking to people in the parking lot. She also testified that he said that the employees did not need a different union and that they already received various benefits. According to Perez, Alvarez finally said that things were going to change and that the employees no longer could continue to come in late or go home early and that three mistakes could cost an employee her job.

With respect to the July incidents, Alvarez testified that he approached Perez while she was in her car and politely told her that she could not be talking to someone in the parking lot after work; that if she wanted to talk to this person she could go 25 feet and talk to him outside the lot. (Alvarez admits that he assumed that she was talking to a Local 32BJ organizer). He testified that on the following morning, he spoke to Perez merely to remind her of the Company's rules about talking to visitors on company premises, which he understood to include the parking lot. He denied telling Perez that the Company was going to make any changes in

[1] The Pall Corporation, according to its web site is a company principally engaged in the business of making various types of filters.

[2] For a more complete description of the company's operations and the ongoing contest between the Charging Party and NOITU, see my decision in JD(NY)-05-05.

the way it enforced its rules and in this respect, I am going to credit his version. I note in this respect that the General Counsel produced no other witnesses to assert that the Respondent had announced plans to more strictly enforce its rules.

III. Analysis

After reviewing the testimony and consistent with my credibility findings, I do not conclude that the Respondent interrogated employees about their union activities, threatened stricter enforcement of company rules, or gave employees the impression that their union activities were being kept under surveillance. In the latter regard, while it is true that Cruz told Perez in early June 2004 that her conversation with a visitor had been observed on a security camera, the evidence indicates that the tenant or building owner had previously placed security cameras around the premises. Therefore Cruz's comment to her was merely a truthful description of what had happened the previous night and should not be construed as an indication that the Respondent was going to engage in union surveillance. I also credit his denial that he threatened her with discharge.

Therefore, the basic remaining question here is whether the Company could tell its employees that they could not speak with union organizers during their off duty hours while they were present in the parking lot owned or leased by the Respondent's client.

Since the parking lot is someone's private property and as there are no special circumstances herein, the owner or the leaseholder could call the police and legally prevent non-employees from trespassing. Absent special circumstances not present in this case, an employer may bar from its property non-employee union supporters. *Lechmere Inc. v. NLRB*, 502 U.S. 527 (1992); *NLRB v. Babcock & Wilcox*, 351 U.S. 105 (1956).[3] Put more prosaically, whether I own or lease property, I have the right, for good reason or ill, (or no reason at all), to prevent my neighbor's well behaved children from playing on my front lawn.

An employer can take reasonable steps to insure that people who are not employees, (as opposed to off duty employees), are prevented from trespassing onto its private property. In *Teksid Aluminum Foundry,* 311 NRB 711 fn. 2 and 715, (1993), the Board affirmed the conclusion that a company did not engage in unlawful surveillance when it posted security guards at its plant entrance and established a procedure whereby persons seeking entry had to sign in and out. The Administrative Law Judge, citing *Hoschton Garment Co*., 279 NLRB 565, 567 (1986), stated that employers "have a right to respond to an organizational campaign by establishing procedures for denying unauthorized persons access to their facilities, and any incidental observation of public union activity by security guards is not unlawful."

However, while it is perfectly permissible for a property holder to preclude non-employees from gaining entrance to private property, the same rule does not automatically apply to the employer's own employees. In *Firestone Tire and Rubber Co., Inc*., 238 NLRB 1323 (1978), an employee and shop steward was told that he could only continue to use the company parking lot if he removed from his car, several large signs, one stating "Don't Buy Firestone Products." This parking lot was used primarily by company employees but also was used by visitors. When the individual refused to remove the signs, he was disciplined. The Board, citing the Supreme Court's decisions in *Eastex, Inc. v. NLRB*, 434 U.S. 1045 (1978); *Hudgens v. NLRB*, 424 US. 507, 521, fn. 10 (1976); *NLRB v. The Babcock & Wilcox Company*,

[3] No contention is made here, nor could one be asserted, that the Union had no reasonable means of communicating with employees.

351 US. 105, 113 (1965); and *Republic Aviation Corporation v. NLRB*, 324 U.S. 793, 803 (1945), stated *inter alia*,

> In an unbroken line of decisions, this Board and the Supreme Court have stated that where an employee exercises his Section 7 rights while legally on an employer's property pursuant to the employment relationship, the balance to be struck is not vis a vis the employer's property rights, but only vis a vis the employer's managerial rights. The difference is "one of substance," since in the latter situation Respondent's managerial rights prevail only where it can show that the restriction is necessary to maintain production or discipline or otherwise prevent the disruption of Respondent's operations….
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> The facts clearly reveal that but for the fact that the parking lot was located on Respondent's premises, Knight was clearly engaged in protected concerted activities. This Board has long held that actions taken in sympathy of other striking employees fall within the protection of Section 7 of the Act....
>
> [T]he Administrative Law Judge cites *Cashway Lumber Inc*., for the rule that an employee does not have a right to affix union posters on the employer's walls and property. However, this case is clearly distinguishable since *Cashway*, supra, stands only for the proposition that an employee is not engaged in protected activity if he defaces the employer's property. The mere presence of an automobile on which signs have been attached does not constitute the defacement of the property on which it has been parked.
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> * * * *
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> This case does not present a situation analogous to *Southwestern Bell Telephone Company,* supra, where a message printed on shirts worn at work … was found to be "offensive, obscene or obnoxious," thereby justifying the employer's actions taken against employees who refused to remove them or cover them up. Here… the boycott signs were not taken into Respondent's work areas, did not interfere with Knight's ability to perform his assigned tasks, and did not otherwise interfere with Respondent's managerial rights. Here, the record clearly reveals that the parking lot was primarily used by employees not then at work and was an appropriate forum for communication among them. The fact that other persons not employed by Respondent may have had access to the parking lot and accordingly have had occasion to read these signs is insufficient reason for Respondent to be able to control an employee's exercise of his Section 7 rights….

The point here is that although it would be permissible for the Respondent or its clients to take steps to preclude union organizers from trespassing onto private property, it is an altogether different story for the Respondent to prevent its own employees from engaging in union or protected concerted activity on private property during their non-working time. Employees who work on private property are not strangers but occupy the status of invitees. As there is no showing that such activity by employees would adversely affect production or work discipline, I can see no justification for a supervisory direction to an employee, (with the necessary implication of disciplinary action for non-compliance), to refrain from engaging in protected activity in the parking lot. Thus while I would not find that the Respondent violated the Act by telling a union organizer to leave the parking lot, I would also find that the Respondent could not legally tell its own employees not to talk to a union organizer or other employees

about union business on the lot during their non-work time. *International Business Machines Corporation*, 333 NLRM 215, 219-221 (2001).

The Respondent may argue that there are special circumstances here. In this regard, there was some testimony that Respondent's management were told by the tenant that it was a terrorist target. But that little piece of hearsay evidence is not sufficient in my opinion. The Respondent presented no other evidence to show that securing the parking lot and making it inaccessible to visitors was necessary for national or anyone else's security. The tenant may have laboratories in the building but I have no idea what they are for. The parking lot is not surrounded by any fences and the entrances are not patrolled by security guards to prevent unauthorized access. On the contrary, the lot is adjacent to a public road, has three unsupervised entrances and can be accessed either by vehicle or by foot.

Conclusions of Law

1. The Respondent, North Hills Office Services, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Service Employees International Union, Local 32BJ, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By directing off duty employees not to engage in union activity in the parking lot, the Respondent has violated Section 8(a)(1) of the Act.

4. The aforesaid violation, affects commerce within the meaning of Section 2(6) and (7) of the Act.

5. Except to the extent found herein, I recommend that the other allegations be dismissed.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Inasmuch as this is the fourth Decision finding that the Respondent has violated various provision of the Act in relation to attempts by Local 32BJ to organize its employees, I shall recommend that the Notice, in English and Spanish, be posted at all facilities in New York and New Jersey where the Respondent is performing services.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended: [4]

ORDER

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

The Respondent, North Hills Office Services, Inc., its officers, agents, successors, and assigns, shall

1. Cease and Desist from

(a) Directing off duty employees not to engage in union activity in the parking lot.

2. Take the following affirmative action that is necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at all of its facilities in New York and New Jersey copies of the attached notice in English and Spanish, marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, or sold the business or the facilities involved herein, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since June 3, 2004.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

Raymond P. Green
Administrative Law Judge

[5] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.
To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT direct off duty employees not to engage in union or other protected concerted activity in the parking lot.

WE WILL NOT in any other manner, interfere with, restrain or coerce our employees in the rights guaranteed to them by Section 7 of the Act.

North Hills Office Services, Inc.
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor
Brooklyn, New York 11201-4201
Hours: 9 a.m. to 5:30 p.m.
718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.